COVENANTS—BUILDING RESTRICTIONS — RIGHT TO BENEFIT. — Complainant and defendant were owners of adjoining lots platted and sold with restrictions in the deed of each grantee. The restrictions were to the effect that dwellings built on lots should have at least six rooms and be placed twenty-four feet from the street line. Defendant, who took without notice that the restrictions were imposed for the benefit of other lots, built a combined business and dwelling block up to the sidewalk. In an action to enforce observance of the restrictions, *held,* complainant not entitled to the benefit of the restrictions, and defendant's building did not amount to a violation thereof. *Kiley* v. *Hall,* (Ohio, 1917), 117 N. E. 359.

In an action to enforce building restrictions, it is important to show, not only that the defendant is bound thereby, but also that the plaintiff is entitled to sue. Whether the restrictions are for the benefit of the vendor, or are meant by him and understood by the purchasers to be for the common advantage of them, is a question of fact, JOLLY, RESTRICTIVE COVENANTS AFFECTING LAND, p. 57. Knowledge of the effect of the restrictions may be important in deciding whether one party is bound and the other has the right to sue, *Renals* v. *Cowlishaw,* 9 Ch. Div. 125; 11 Ch. Div. 866. The knowledge or notice to the parties may be actual and found in the immediate deed in express terms of mutuality, *Henderson* v. *Champion,* 83 N. J. Eq. 554. If it settled that the restriction was for the benefit of a particular piece of land, then, although there is no mention of the restriction in the immediate deed, the right to assert such benefit may pass by a conveyance of the land and "appurtenances", *Hartt* v. *Rueter,* 223 Mass. 207. The same result should be reached without the word "appurtenances". The intention of the vendor that the restrictions were for the benefit of the several grantees may be inferred from statements made at a public auction, *Nottingham Patent Brick & Tile Co.* v. *Butler,* 16 Q. B. D. 778, JOLLY, RESTRICTIVE COVENANTS AFFECTING LAND, p. 57. The most common method of imposing building restrictions upon the land for the benefit of subsequent purchasers is by a general building scheme, *Wiegman* v. *Kusel,* 270 Ill. 520. The proof of the general plan must, however, be clear. Contiguous lots conveyed with various restrictions and some without restrictions may defeat proof of a general plan. *St. Patrick's Religious &c. Ass'n.* v. *Hale,* (Mass. 1917), 116 N. E. 407. It must be clear either from the language of the deeds or from circumstances that there is a general plan, *Dana* v. *Wentworth,* 111 Mass. 291. If the general plan becomes abortive, it is a circumstance tending to show that the restriction was not intended for the benefit of the other lots, *Coughlin* v. *Barker,* 46 Mo. App. 54, 66. If the restrictions on the platted land are in the chain of title of both complainant and defendant, complainant is entitled to enforce the restrictions, *Hartwig et al.* v. *Grace Hospital,* (Mich. 1917), 165 N. W. 827. The better view, however, is the contrary one. See 14 MICH. L. REV. 685.

DEDICATION—ACCEPTANCE—WHAT CONSTITUTES.—P sued under a Street Closing Act to recover compensation for the closing of a street which he claimed had been dedicated to the public, an acceptance of said street being

implied from a general public user for ten years and the construction thereon by various public officials of gas mains, sewers, street lamps, signposts, and an ash sidewalk. *Held,* that these things were insufficient to show its acceptance as a public street by the city. *In re Wallace, Barnes, and Matthews Aves.,* (N. Y., 1917), 118 N. E. 506.

In order to create a valid common law dedication all the authorities agree that there must be, first, an intention to dedicate and, second, an acceptance by the public. See ELLIOTT, ROADS AND STREETS, Secs. 124, 150; ANGELL, HIGHWAYS, Secs. 142, 157; TIFFANY, REAL PROPERTY, Secs. 422, 423. Assuming the sufficiency of the intention to dedicate, the question arises as to what shall constitute a valid acceptance. Most courts would hold that the nature of the requisite acceptance is dependent on whether it is the dedicator or the municipality that is sought to be charged. Thus, in order to bind the grantor it is sufficient in most jurisdictions if there has been a substantial public user for the purposes of the dedication. *Cassidy* v. *Sullivan,* 75 Neb. 847; *Atty. Gen.* v. *Abbott,* 154 Mass. 323; *Downend* v. *Kansas City,* 156 Mo. 60; *Alden Coal Co.* v. *Challis,* 200 Ill. 222; *Green* v. *Elliott,* 86 Ind. 53; *Reg.* v. *Petrie,* 30 Eng. Law and Eq. 207; *Carter* v. *City of Portland,* 4 Ore. 339; *Briel* v. *City of Natchez,* 48 Miss. 423; *Crump* v. *Minis,* 64 N. C. 767; TIFFANY, REAL PROPERTY, p. 978. But in some jurisdictions it seems that user alone will not even bind him. *Speir* v. *Town of New Utrecht,* 121 N. Y. 420; *White* v. *Bradley,* 66 Me. 254. In *Terry* v. *McClung,* 104 Va. 599, it was held that a road dedicated to the public must be accepted by the county court on its records before it can be a public road; in some states it is held that the acceptance must be by the city council. *Schuster* v. *Barber Asphalt Paving Co.,* 24 Ky. Rep. 2346; *Brewer* v. *Pine Bluff,* 80 Ark. 489. According to what seems to represent the weight of authority, user alone does not constitute an adequate acceptance when the municipality is the party sought to be charged. *Downing* v. *Coatesville Borough,* 214 Pa. 291; *Downend* v. *Kansas City, supra; Smith* v. *Smythe,* 197 N. Y. 457. But, to the effect that user alone will constitute such an acceptance as will bind the municipality see ELLIOTT, ROADS AND STREETS, p. 163; *King* v. *Leake,* 5 B. & Ad. 469, (1833), but this was changed by the HIGHWAY ACT of 1835; *Green* v. *Town of Canaan,* 29 Conn. 157; *Hobbs* v. *Inhabitants of Lowell,* 19 Pick. 405; *Town of Fowler* v. *Linquist,* 138 Ind. 566, (*semble*); *City of Hammond* v. *Maher,* 30 Ind. App. 286. In the last case the court said: "The evidence does not show that the appellant had formally accepted it, or that it had ever caused it to be worked as a street, but under the authorities this is not necessary". But even in most of the jurisdictions that deem user alone insufficient to show an acceptance on the part of the public so as to bind the city, it would be held that an acceptance by the public need not be by a formal act of the public authorities, but may be implied from the latter's improving or repairing the same, or from any other act with respect to the subject matter which indicates an assumption of jurisdiction and dominion over the same. *Arnold* v. *City of Orange,* 73 N. J. Eq. 280; *Hall* v. *Breyfogle,* 162 Ind. 494 (500); *Chapman* v. *City of Sault Ste. Marie,* 146 Mich.

23; *Folsom* v. *Town of Underhill,* 36 Vt. 580. But, that these repairs must have been made by the city officials who have authority to accept and lay out streets, see *Ogle* v. *City of Cumberland,* 90 Md. 59; *People* v. *Underhill,* 144 N. Y. 316; *State of Maine* v. *Bradbury,* 40 Me. 154; *Reed* v. *Inhabitants of Scituate,* 5 Allen 120. It is on the principle enunciated in these last cases that the instant case seems to have been decided, since in that case it does not appear that the improvements were made by the direction or authority of the highway commissioners.

HOSPITALS—LIABILITY FOR SERVANT'S TORTS—LIABILITY FOR VIOLATION OF CONTRACTUAL DUTY.—Defendant was owner of a private hospital and contracted with the plaintiff to furnish her with a room, nurses' care, and the use of the operating room for an operation for which ether was to be administered. While under the influence of the anæsthetic the plaintiff was robbed of a valuable ring and the evidence tended to show that it was stolen by one of the nurses. No negligence on defendant's part was shown. *Held,* that though defendant was not negligent, and though the nurse, in stealing the ring, was not acting within the course of her employment, yet defendant was liable for the breach of his contractual duty to afford her protection, whether from employees or strangers. *Vannah* v. *Hart Private Hospital,* (Mass., 1917), 117 N. E. 328.

A master is liable for the neligent or even malicious torts of his servants so long as they are within the course of his employment as furthering, however remotely, the master's business, *Holler* v. *Ross,* 68 N. J. L. 324; and in some instances a master is liable for his servants' acts without the course of his employment, if they result in injury to those to whom the master owes a special duty of hospitality or protection. The most striking example of this is of course the liability of the common carrier. A steamboat company is liable for an assault on a passenger by a waiter employed in the lunchroom, *Bryant* v. *Rich,* 106 Mass. 180, and a railroad company for a brakeman's abuse of a passenger according to *Goddard* v. *Grand Trunk,* 57 Me. 202; and so is a sleeping car company for an attack by a porter on the occupier of a berth, *Nevin* v. *Pullman Palace Car Co.,* 106 Ill. 222. Although at first there was some conflict of authorities, the weight of recent decisions seems to be in favor of accepting the doctrine announced in the *Goddard Case, supra,* that the liability of a carrier is almost that of an insurer. But this exceptional liability has been ascribed to others who invite guests upon their premises, thereby impliedly warranting to them courteous treatment and personal safety. The same principle applies to innkeepers and theatre-proprietors in England almost without question, cf. 16 MICH. L. REV. 202; in the United States with less unanimity, but yet in a goodly array of authorities; *Overstreet* v. *Moser,* 88 Mo. App. 72; *Rommel* v. *Schambacher,* 120 Pa. 579; *Dickson* v. *Waldron,* 135 Ind. 507; and finally in the vexed case of *Clancy* v. *Barker,* (Neb.), 98 N. W. 440; though the same facts resulted in a contrary verdict, by a divided court, in 131 Fed. 161, on the theory that this extra liability applies only to carriers because of the extra hazard incidental to the service they offer. If the implied warranty contained in an